

IN THE UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF TEXAS  
SAN ANTONIO DIVISION

JAMES MARTZALL  
Plaintiff

VS.

DEUTSCHE BANK NATIONAL TRUST	\$
COMPANY, AS INDENTURE TRUSTEE,	\$
ON BEHALF OF THE HOLDERS OF	\$
THE ACCREDITED MORTGAGE	\$
LOAN TRUST 2006-2 ASSET BACKED	\$
NOTES	\$
Defendant	\$

§ § § § § § § §

C.A. NO. 5:24-cv-00042-OLG

**DEFENDANT’S ADVISORY AND MOTION TO DISMISS BASED  
ON THE COURT’S SHOW CAUSE ORDER**

Defendant, Deutsche Bank National Trust Company, as Indenture Trustee, on behalf of the holders of the Accredited Mortgage Loan Trust 2006-2 Asset Backed Notes (“**Trustee**” or “**Defendant**”) files this Advisory and Motion to Dismiss Based on the Court’s Show Cause Order (Dkt. 4) and would respectfully show as follows:

## BACKGROUND

1. James Martzall (“**Plaintiff**” or “**Borrower**”) is a serial lawsuit and bankruptcy filer that has abused the state and federal court systems in furtherance of his attempts to remain in real property collateral for as long as possible without making his contractually required loan payments and without asserting any legally viable claims against, Defendant. See Exhibit 1 for a listing of lawsuits filed by Plaintiff relating to Loan at issue and Exhibit 2 for prior bankruptcy filings by Plaintiff that halted foreclosure and were subsequently dismissed.

2. This is at least the fourth lawsuit filed by Plaintiff relating to the same loan. All prior lawsuits have been dismissed and as the Court has recognized, at least one of the prior cases

was dismissed with prejudice under C.A. 5:22-CV-00018 (W.D. Tex. January 10, 2022). Defendant would also point out that Plaintiff's claims relating to the same loan against the mortgage servicer Select Portfolio Servicing, Inc. were also dismissed with prejudice under C.A. 5:23-cv-00010-OLG on January 25, 2024. See Dkt 21-Final Judgment in C.A. 5:23-cv-00010-OLG.

3. In that action the Court recognized Plaintiff's prior abuses of the court system and required him to seek Court permission prior to any additional filings in Federal Court regarding the subject mortgage and property. See Dkt. 20 in C.A. 5:23-cv-00010-OLG. Prior to that Judgment, Plaintiff was prosecuting a contemporaneous lawsuit in furtherance of his foreclosure delay tactics by, among other things, obtaining ex parte injunctive relief in state court while a federal court case regarding the same loan was pending. That case was removed to this Court. See Exhibit 1 and Defendant's Motion for Non-Monetary Sanctions filed in C.A. 5:23-cv-00010-OLG at Dkt. 8.

4. Plaintiff has also filed at least 5 bankruptcies for the sole purpose of delaying properly noticed foreclosure sales. See Exhibit 2. The latest bankruptcy recently resulted in dismissal and the entry of an order precluding Plaintiff from filing any additional bankruptcies for 180 days. See Exhibit 3.

5. On January 19, 2024, in this action, the Court entered an Order by which Plaintiff was ordered to show cause within 14 days of the Order as to why Plaintiff's claims against Defendant should not be dismissed with prejudice based on res judicata. See Dkt. 4-Show Cause Order. Plaintiff has filed nothing in this action since the entry of the Show Cause Order and has done nothing to prosecute the present action. Defendants respectfully requests that the present action be dismissed with prejudice and for any other relief the Court deems appropriate to prevent

the continued filing of frivolous litigation by Plaintiff against Defendant relating to the subject loan.

**REQUEST FOR RELIEF**

6. Based on the foregoing background and the Court's January 19, 2024 Show Cause Order, Defendant respectfully requests that this action be dismissed with prejudice and that Plaintiff be admonished that any future filing by him of any further litigation regarding this same loan and property in state or federal court could result in monetary sanctions against him, and for such other relief to which Defendant may be entitled.

Respectfully submitted,

By: /s/ Michael F. Hord Jr.

Michael F. Hord Jr.

State Bar No. 00784294

Federal I.D. No. 16035

Eric C. Mettenbrink

State Bar No. 24043819

Federal I.D. No. 569887

HIRSCH & WESTHEIMER, P.C.

1415 Louisiana, 36<sup>th</sup> Floor

Houston, Texas 77002-2772

713-220-9182 Telephone

713-223-9319 Facsimile

Email: mhord@hirschwest.com

Email: emettenbrink@hirschwest.com

**ATTORNEYS FOR DEFENDANTS**

**CERTIFICATE OF SERVICE**

I hereby certify that on this 21<sup>st</sup> day of August, 2024, a true and correct copy of the foregoing and/or attached was served on each attorney of record or party in accordance with **Federal Rule of Civil Procedure 5(b)** as follows:

James Martzall Pro Se  
16543 Inwood Cove  
San Antonio, Texas 78248  
**Via ECF and Regular Mail**

/s/ Michael F. Hord Jr.  
Michael F. Hord Jr.